

4015
1 BILL NO. S-78-03-3/

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3
4 SPECIAL ORDINANCE NO. S-

5 55-78

5 AN ORDINANCE approving an Agreement
6 with Henry B. Steeg & Associates,
7 for additional Engineering Services
on Expansion of Wastewater Treatment
Facilities.

8
9 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE,
10 INDIANA:

11 SECTION 1. That the Agreement dated March 22, 1978, between
12 the City of Fort Wayne, by and through its Mayor and the Board of Public
13 Works and Henry B. Steeg & Associates, for:

14 Additional Engineering Services on Expansion
15 of Wastewater Treatment Facilities requested
16 through Change Orders 18 and 19 to the Water
Pollution Control Plant Expansion Project

17 for an amount to be determined by the current Federally Audited Overhead
18 Factor, all as more particularly set forth in said Agreement which is on
19 file in the Office of the Board of Public Works and is by reference incor-
20 porated herein, made a part hereof and is hereby in all things ratified,
21 confirmed and approved.

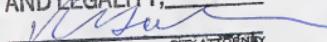
22 SECTION 2. That this Ordinance shall be in full force and
23 effect from and after its passage and approval by the Mayor.

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Councilman

APPROVED AS TO FORM
AND LEGALITY,



John G. Stueck

CITY ATTORNEY

Read the first time in full and on motion by Burns, seconded by

Henry, and duly adopted, read the second time by title and referred to the Committee on City Yacht (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19_____, at _____ o'clock M., E.S.T.

DATE: 2-28-78

Charles W. Westerman
CITY CLERK

Read the third time in full and on motion by Burns, seconded by Henry, and duly adopted, placed on its passage.

PASSED ~~(LOSE)~~ by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	<u>0</u>	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>HING</u>	<u>X</u>	_____	_____	_____	_____
<u>HUNTER</u>	<u>X</u>	_____	_____	_____	_____
<u>MOSES</u>	<u>X</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, V.</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 4-11-78

Charles W. Westerman
CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as

(ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE

(RESOLUTION) No. D-55-78 on the 11th day of April, 1978
ATTEST: (SEAL)

Charles W. Westerman
CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of April, 1978 at the hour of 11:30 o'clock A.M., E.S.T.

Charles W. Westerman
CITY CLERK

Approved and signed by me this 17th day of April, 1978
at the hour of 11 o'clock M., E.S.T.

Robert Armstrong
MAYOR

Bill No. S-78-03-31

REPORT OF THE COMMITTEE ON CITY UTILITIES

We, your Committee on City Utilities to whom was referred an Ordinance approving an Agreement with Henry B. Steeg & Associates, for additional Engineering Services on Expansion of Wastewater Treatment Facilities

[A series of approximately 15 blank horizontal lines for signatures.]

have had said Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance do PASS.

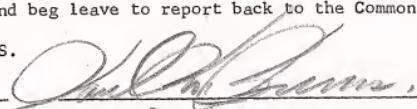
PAUL M. BURNS - CHAIRMAN

JAMES S. STIER - VICE CHAIRMAN

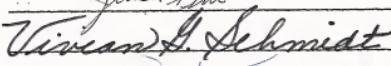
VIVIAN G. SCHMIDT

WINFIELD C. MOSES, JR.

FREDRICK R. HUNTER


Paul M. Burns,

James S. Stier


Vivian G. Schmidt

Winfield C. Moses, Jr.


Frederick R. Hunter

4-11-78 CONCURRED IN

DATE CHARLES W. WESTERMAN, CITY CLERK

A G R E E M E N T

WHEREAS, the CITY OF FORT WAYNE, INDIANA (Owner) and HENRY B. STEEG & ASSOCIATES, subsequently assigned to HOWARD NEEDLES TAMMEN & BERGENDOFF, HENRY B. STEEG & ASSOCIATES DIVISION (Engineer), entered into a contract dated April 27, 1971 for certain engineering services; and

WHEREAS, the OWNER desires to have additional services performed not contemplated by the original contract including but not limited to additions and expansion of the wastewater treatment facilities beyond the needs identified in the Engineer's plans and specifications, which were bid in October, 1974; and

WHEREAS, the ENGINEER has withdrawn its offer of April 27, 1971 to provide additional services (A-4) and resident project services (A-5).

NOW, THEREFORE, the OWNER and the ENGINEER hereby agree to supplement their contract dated April 27, 1971 as follows:

Supplement 1

A. Beginning upon written authorization to proceed by the OWNER, the ENGINEER shall provide one (1) full-time resident representative at the project site for a period not to exceed 112 work days. Services to be performed shall be in accordance with Exhibit "B" attached hereto and made a part of this Agreement.

B. The ENGINEER shall prepare the necessary drawings and specifications in a form suitable for approval by the State and Federal agencies for power distribution system engineering for changes required resulting from the sale of OWNER'S electric utilities to Indiana & Michigan Electric Co.

C. The ENGINEER shall perform professional services as provided for in Section A-3 of the contract dated April 27, 1971 for all work designed in the foregoing paragraph B.

D. The ENGINEER shall prepare the necessary drawings and specifications in a form suitable for approval by the State and Federal agencies for improvements to power distribution and motor control centers at the storm water treatment facility.

E. The ENGINEER shall perform professional services as provided for in Section A-3 of the contract dated April 27, 1971 for all work designed in the foregoing Paragraph D.

Supplement 2

For services rendered under this Supplement, the ENGINEER shall be paid a fixed fee and its cost. Cost shall be determined as direct salaries times a Federally audited overhead factor in effect at the time services are performed, which includes fringe benefits, salary related cost and general overhead, plus out-of-pocket expenses and equipment rental. The Federally audited overhead factor for calendar year ending December 31, 1976 is 2.2379.

The estimated total fee of services is as follows:

<u>Supplement</u>	<u>Cost</u>	<u>Fixed Fee</u>	<u>Total</u>
1-A	\$32,565	\$4,900	\$37,465
1-B			\$19,680 (lump sum)
1-C			\$11,100 (lump sum)
1-D			\$ 2,020 (lump sum)
1-E			\$ 2,300 (lump sum)

It is estimated that the total cost to the OWNER for the performance of the aforementioned services, exclusive of the fixed fees, will not exceed the estimated cost as provided above and the ENGINEER agrees to use its good faith effort to perform said work within such estimated cost. If, at any time as the work progresses, the ENGINEER has reason to believe that the cost will be greater than the estimated cost hereof, the ENGINEER shall notify the OWNER and agencies which have tendered grants in writing to that effect, giving the revised estimate of such cost for said work.

For billing purposes, the ENGINEER shall use its projected overhead factor if the actual Federally audited overhead factor has not been determined at the time services are performed. Appropriate adjustments to reflect an increase or decrease in said overhead shall be made upon determination of the actual Federally audited overhead factor.

The OWNER shall not be obligated to reimburse the ENGINEER for costs incurred in excess of the estimated cost set forth above, and the ENGINEER shall not be obligated to continue performance of said work or otherwise to incur costs in excess of the estimated cost set forth above, unless and until the OWNER shall have notified the ENGINEER in writing that such estimated cost has been increased and shall have specified in such notice a revised estimated cost which shall thereupon constitute the revised estimated cost of said work. When and to the extent that the estimated cost set forth has been increased, any costs incurred by the ENGINEER in excess of the estimated cost prior to such increases shall be allowable to the same extent as if such costs had been incurred after the increase.

Supplement 3

The OWNER and the ENGINEER acknowledge certain requirements have been made effective subsequent to April 27, 1971 by the U.S. EPA, and in order to comply with such requirements, there is attached hereto and made a part hereof "General Conditions" and identified as Exhibit "A" which shall apply only to this Supplement and not the contract dated April 27, 1971.

Supplement 4

The effective date of this Supplement shall be the same as the original contract dated April 27, 1971.

HOWARD NEEDLES TAMMEN & BERGENDOFF
HENRY B. STEEG & ASSOCIATES DIVISION
ARCHITECTS ENGINEERS PLANNERS

CITY OF FORT WAYNE, INDIANA

By Howard N. Steeg
Partner

By _____
Robert E. Armstrong, Mayor

ATTEST: Ursula Miller

By Henry B. Steeg
Edgar W. Parker
Mayo Scott
Its Board of Public Works

APPROVED AS TO FORM AND LEGALITY

Henry B. Steeg
CITY ATTORNEY
Associate

EXHIBIT "A"

GENERAL CONDITIONS

1. General

- (a) The Owner and the Engineer agree that the following provisions shall apply to the EPA grant-eligible work to be performed under this agreement and that such provisions shall supersede any conflicting provisions of this agreement.
- (b) The work under this agreement is funded in part by a grant from the U. S. Environmental Protection Agency. Neither the United States nor the U. S. Environmental Protection Agency (hereinafter, "EPA") is a party to this agreement. This agreement which covers grant-eligible work is subject to regulations contained in 40 CFR 35.936, 35.937, and 35.939 in effect on the date of execution of this agreement. As used in these clauses, the words "the date of execution of this agreement" mean the date of execution of this agreement and any subsequent modification of the terms, compensation or scope of services pertinent to unperformed work.
- (c) The rights and remedies of the owner provided for in these clauses are in addition to any other rights and remedies provided by law or under this agreement.

2. Responsibility of the Engineer

- (a) The Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, specifications, reports and other services furnished by the Engineer under this agreement. The Engineer shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in his designs, drawings, specifications, reports and other services.
- (b) The Engineer shall perform such professional services as may be necessary to accomplish the work required to be performed under this agreement, in accordance with this agreement and applicable EPA requirements in effect on the date of execution of this agreement.
- (c) Approval by the Owner or EPA of drawings, designs, specifications, reports, and incidental engineering work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the technical adequacy of his work. Neither the Owner's nor EPA's review, approval or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of any rights under this agreement or of any cause of action arising out of the performance of this agreement.

(d) The Engineer shall be and remain liable in accordance with applicable law for all damages to the Owner or EPA caused by the Engineer's negligent performance of any of the services furnished under this agreement, except for errors, omissions or other deficiencies to the extent attributable to the Owner, Owner-furnished data or any third party. The Engineer shall not be responsible for any time delays in the project caused by circumstances beyond the Engineer's control. Where new or advanced processes, methods or technology (see 40 CFR 35.908) are recommended by the Engineer and are utilized, the Engineer shall be liable only for gross negligence to the extent of such utilization.

3. Scope of Work

The services to be rendered by the Engineer shall include all services required to complete the task or Step in accordance with applicable EPA regulations (40 CFR Part 35, Subpart E in effect on the date of execution of this agreement) to the extent of the scope of work as defined and set out in the engineering services agreement to which these provisions are attached.

4. Changes

- (a) The Owner may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If such changes cause an increase or decrease in the Engineer's cost of, or time required for, performance of any services under this agreement, whether or not changed by any order, an equitable adjustment shall be made and this agreement shall be modified in writing accordingly. Any claim of the Engineer for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Engineer of the notification of change unless the Owner grants a further period of time before the date of final payment under this agreement.
- (b) No services for which an additional compensation will be charged by the Engineer shall be furnished without the written authorization of the Owner.
- (c) In the event that there is a modification of EPA requirements relating to the services to be performed under this agreement subsequent to the date of execution of this agreement, the increased or decreased cost of performance of the services provided for in this agreement shall be reflected in an appropriate modification of this agreement.

5. Termination

- (a) This agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this agreement through no fault of the terminating party: Provided, That no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (b) This agreement may be terminated in whole or in part in writing by the Owner for its convenience: Provided, That such termination is for good cause (such as for legal or financial reasons, major changes in the work or program requirements, initiation of a new Step) and that the Engineer is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party prior to termination.
- (c) If termination for default is effected by the Owner, an equitable adjustment in the price provided for in this agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Engineer at the time of termination may be adjusted to the extent of any additional costs occasioned to the Owner by reason of the Engineer's default. If termination for default is effected by the Engineer, or if termination for convenience is effected by the Owner, the equitable adjustment shall include a reasonable profit for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Engineer relating to commitments which had become firm prior to the termination.
- (d) Upon receipt of a termination action pursuant to paragraphs (a) or (b) above, the Engineer shall (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to the Owner all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Engineer in performing this agreement, whether completed or in process.
- (e) Upon termination pursuant to paragraphs (a) or (b) above, the Owner may take over the work and prosecute the same to completion by agreement with another party or otherwise. Any work

taken over by the Owner for completion will be completed at the Owner's risk, and the Owner will hold harmless the Engineer from all claims and changes arising out of improper use of the Engineer's work.

- (d) If, after termination for failure of the Engineer to fulfill contractual obligations, it is determined that the Engineer had not so failed, the termination shall be deemed to have been effected for the convenience of the Owner. In such event, adjustment of the price provided for in this agreement shall be made as provided in paragraph (c) of this clause.

6. Remedies

Except as may be otherwise provided in this agreement, all claims, counter-claims, disputes and other matters in question between the Owner and the Engineer arising out of or relating to this agreement or the breach thereof will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the State in which the Owner is located.

7. Payment

- (a) Payment shall be made in accordance with the payment schedule incorporated in this agreement as soon as practicable upon submission of statements requesting payment by the Engineer to the Owner. If no such payment schedule is incorporated in this agreement, the payment provisions of paragraph (b) of this clause shall apply.
- (b) Monthly progress payments may be requested by the Engineer and shall be made by the Owner to the Engineer as soon as practicable to upon submission of statements requesting payment by the Engineer to the Owner. When such progress payments are made, the Owner may withhold up to ten percent of the vouchered amount until satisfactory completion by the Engineer of work and services within a Step called for under this agreement or any specified task hereunder is substantially complete and that the amount of retained percentages is in excess of the amount considered by him to be adequate for the protection of the Owner, he shall release to the Engineer such excess amount.
- (c) No payment request made pursuant to paragraph (a) or (b) of this clause shall exceed the estimated amount and value of the work and services performed by the Engineer under this agreement, which estimates shall be prepared by the Engineer and supplemented or accompanied by such supporting data as may be required by the Owner.
- (d) Upon satisfactory completion of the work performed hereunder, and prior to final payment under this agreement for such work, or prior settlement upon termination of the agreement, and as a condition precedent thereto, the Engineer shall execute and deliver to the Owner a release of all claims against the Owner

arising under or by virtue of this agreement, other than such claims, if any, as may be specifically exempted by the Engineer from the operation of the release in stated amounts to be set forth therein.

8. Project Design

- (a) In the performance of this agreement, the Engineer shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes, consistent with 40 CFR 35.936-3 and 35.936-13 in effect on the date of execution of this agreement except to the extent that advanced technology may be utilized pursuant to 40 CFR 35.908 in effect of the date of execution of this agreement.
- (b) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification such as to require the use of structures, machines, products, materials, construction methods, equipment, or processes which are known by the Engineer to be available only from a sole source, unless such use has been adequately justified in writing by the Engineer.
- (c) The Engineer shall not, in the performance of the work called for by this agreement, produce a design or specification which would be restrictive in violation of Sec. 204(a)(6) of the Federal Water Pollution Control Act (PL 92-500). This statute requires that no specification for bids or statement of work shall be written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment, or at least two brand names or trade names of comparable quality or utility are listed and are followed by the words "or equal". With regard to materials, if a single material is specified, the Engineer must be prepared to substantiate the basis for the selection of the material.
- (d) The Engineer shall report to the Owner any sole-source or restrictive design or specification giving the reason or reasons why it is considered necessary to restrict the design or specification.
- (e) The Engineer shall not knowingly specify or approve the performance of work at a facility which is in violation of Clean Air or Water standards and which is listed by the Director of the EPA Office of Federal Activities pursuant to 40 CFR Part 15.

9. Audit: Access to Records

- (a) The Engineer shall maintain books, records, documents and other evidence directly pertinent to performance on EPA grant work under this agreement in accordance with generally accepted accounting principles and practices consistently applied, and 40 CFR 30.605, 30.805, and 35.935-7 in effect on the date of execution of this agreement. The Engineer shall also maintain the financial information and data used by the Engineer in the preparation or support of the cost submission required pursuant to 40 CFR 35.937-6(b) in effect on the date of execution of this agreement and a copy of the cost summary submitted to the Owner. The United States Environmental Protection Agency, the Comptroller General of the United States, the United States Department of Labor, Owner, and the State water pollution control agency, or any of their duly authorized representatives shall have access to such books, records, documents and other evidence for the purpose of inspection, audit and copying. The Engineer will provide proper facilities for such access and inspection.
- (b) The Engineer agrees to include paragraphs (a) through (e) of this clause in all his contracts and all their sub-contracts directly related to project performance which are in excess of \$10,000.
- (c) Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
- (d) The Engineer agrees to the disclosure of all information and reports resulting from access to records pursuant to paragraphs (a) and (b) above, to any of the agencies referred to in paragraph (a) above, provided that the Engineer is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Engineer.
- (e) Records under paragraphs (a) and (b) above shall be maintained and made available during performance on EPA grant work under this agreement and until three years from date of final EPA grant payment for the project. In addition, those records which relate to any "Dispute" appeal under an EPA grant agreement, or litigation, or the settlement of claims arising out of such performance, or costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

10. Price Reduction for Defective Cost or Pricing Data

(This clause is applicable if the amount of this agreement exceeds \$100,000).

- (a) If the Owner or EPA determines that any price, including profit, negotiated in connection with this agreement or any cost reimbursable under this agreement was increased by any significant sums because the Engineer or any subcontractor furnished incomplete or inaccurate cost or pricing data or data not current as certified in his certification of current cost or pricing data (EPA Form 5700-41), then such price or cost or profit shall be reduced accordingly and the agreement shall be modified in writing to reflect such reduction.
- (b) Failure to agree on a reduction shall be subject to the Remedies clause of this agreement.

(NOTE - Since the agreement is subject to reduction under this clause by reason of defective cost or pricing data submitted in connection with certain subcontracts, the Engineer may wish to include a clause in each such subcontract requiring the subcontractor to appropriately indemnify the Engineer. It is also expected that any subcontractor subject to such indemnification will generally require substantially similar indemnification for defective cost or pricing data required to be submitted by his lower tier subcontractors.

11. Subcontracts

- (a) Any subcontractors and outside associates or consultants required by the Engineer in connection with the services covered by this agreement will be limited to such individuals or firms as were specifically identified and agreed to during negotiations, or as are specifically authorized by the Owner during the performance of this agreement. Any substitutions in or additions to such subcontractors, associates, or consultants will be subject to the prior approval of the Owner.
- (b) The Engineer may not subcontract services in excess of thirty percent (or _____ percent, if the Owner and the Engineer hereby agree) of the contract price to subcontractors or consultants without prior written approval of the Owner.

12. Labor Standards

To the extent that this agreement involves "construction" (as defined by the Secretary of Labor), the Engineer agrees that such construction work shall be subject to the following labor standards provisions, to the extent applicable:

- (a) Davis-Bacon Act (40 U.S.C. 276a-276a-7);
- (b) Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333);
- (c) Copeland Anti-Kickback Act (18 U.S.C. 874); and
- (d) Executive Order 11246 (Equal Employment Opportunity);

and implementing rules, regulations, and other relevant orders of the Secretary of Labor or EPA; and the Engineer further agrees that this agreement shall include and be subject to the "Labor Standards Provisions for Federally Assisted Construction Contracts" (EPA Form 5720-4) in effect at the time of execution of this agreement.

13. Equal Employment Opportunity

In accordance with EPA policy as expressed in 40 CFR 30.429-5, the Engineer agrees that he will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age or national origin.

14. Utilization of Small and Minority Business

In accordance with EPA policy as expressed in 40 CFR 35.936-7, the Engineer agrees that qualified small business and minority business enterprises shall have the maximum practicable opportunity to participate in the performance of EPA grant-assisted contracts and subcontracts.

15. Covenant Against Contingent Fees

The Engineer warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach or violation of this warranty the Owner shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

16. Gratuities

- (a) If it is found, after notice and hearing, by the Owner that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Engineer, or any agent

or representative of the Engineer, to any official, employee or agent of the Owner, of the State, or of EPA with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performance of this agreement, the Owner may, by written notice to the Engineer, terminate the right of the Engineer to proceed under this agreement or may pursue such other rights and remedies provided by law or under this agreement: Provided, That the existence of the facts upon which the Owner makes such findings shall be in issue and may be reviewed in proceedings pursuant to the Remedies clause of this agreement.

- (b) In the event this agreement is terminated as provided in paragraph (a) hereof, the Owner shall be entitled (1) to pursue the same remedies against the Engineer as it could pursue in the event of a breach of the contract by the Engineer, and (2) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Owner) which shall be not less than three nor more than ten times the costs incurred by the Engineer in providing any such gratuities to any such officer or employee.

17. Patents

If this agreement involves research, developmental, experimental, or demonstration work and any discovery or invention arises or is developed in the course of or under this agreement, such invention or discovery shall be subject to the reporting and rights provisions of Subpart D of 40 CFR Part 30, in effect on the date of execution of this agreement, including Appendix B of said Part 30. In such case, the Engineer shall report the discovery or invention to EPA directly or through the Owner, and shall otherwise comply with the Owner's responsibilities in accordance with said Subpart D of 40 CFR Part 30. The Engineer hereby agrees that the disposition of rights to invention made under this agreement shall be in accordance with the terms and conditions of aforementioned Appendix B. The Engineer shall include provisions appropriate to effectuate the purposes of this condition in all subcontracts involving research, developmental, experimental, or demonstration work.

18. Copyrights and Rights in Data

- (a) The Engineer agrees that any plans, drawings, designs, specifications, computer programs (which are substantially paid for with EPA grant funds), technical reports, operating manuals, and other work submitted with a Step 1 Facilities Plan or with a Step 2 or Step 3 grant application or which

are specified to be delivered under this agreement or which are developed or produced and paid for under this agreement (referred to in this clause as "Subject Data") are subject to the rights in the United States, as set forth in Subpart D of 40 CFR Part 30 and in Appendix C to 40 CFR Part 30, in effect on the date of execution of this agreement, including the right to use, duplicate and disclose, such Subject Data, in whole or in part, in any manner for any purpose whatsoever, and have others do so. For purposes of this article, "grantee" as used in said Appendix C shall refer to the Engineer. If the material is copyrightable, the Engineer may copyright such, as permitted by said Appendix C, and subject to the rights in the Government as set forth in Appendix C, but the Owner and the Federal Government reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and use such materials, in whole or in part, and to authorize others to do so. The Engineer shall include provisions appropriate to effectuate the purpose of this condition in all subcontracts expected to produce copy-rightable Subject Data.

- (b) All such Subject Data furnished by the Engineer pursuant to this agreement are instruments of his services in respect of the project. It is understood that the Engineer does not represent such Subject Data to be suitable for reuse on any other project or for any other purpose. Any reuse by the Owner without specific written verification or adaptation by the Engineer will be at the risk of the Owner and without liability to the Engineer. Any such verification or adaptation will entitle the Engineer to further compensation at rates to be agreed upon by the Owner and the Engineer.

EXHIBIT "B" TO AGREEMENT BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES

DUTIES, RESPONSIBILITIES AND LIMITATIONS OF THE AUTHORITY OF THE
RESIDENT PROJECT REPRESENTATIVE.

A. General.

The Resident Project Representative is the ENGINEER'S Agent and shall act under the supervision and direction of the ENGINEER. He shall confer with the ENGINEER regarding his actions, and shall generally communicate with the OWNER only through the ENGINEER.

B. Duties and Responsibilities.

The Resident Project Representative shall:

1. **Schedule:** Review the progress schedule prepared by the CONTRACTOR for compliance with the contract and give written advice to the ENGINEER concerning its acceptability.
2. **Conferences:** Attend pre-construction conferences. Arrange a schedule of progress meetings and other job conferences as required in consultation with the ENGINEER and notify those expected to attend in advance. Maintain and circulate copies of records of the meetings.
3. **Liaison:**
 - a. Serve as the ENGINEER'S liaison with the CONTRACTOR working principally through the CONTRACTOR'S superintendent. Alert the CONTRACTOR, through his superintendent, to the hazards involved in accepting and acting upon instructions from the OWNER or others, except such instructions transmitted through the ENGINEER.
 - b. Cooperate with the CONTRACTOR in his dealings with the various local agencies having jurisdiction over the Project in order to complete service connections to public utilities and facilities.
 - c. Assist the ENGINEER in obtaining from the OWNER additional details or information, when required, at the job site for proper execution of the work.
4. **Approvals:** When required, assist the ENGINEER in obtaining from the CONTRACTOR a list of his proposed suppliers and subcontractors.
5. **Samples:** Assist the ENGINEER in obtaining field samples of materials delivered to the site which are required to be furnished, and keep record of actions taken by ENGINEER.

6. **Shop Drawings:**
 - a. Receive approved shop drawings and other submissions from the ENGINEER; record data received, maintain a file of the drawings and submissions, and check construction for compliance with them.
 - b. Alert the CONTRACTOR'S superintendent when he observes materials or equipment being installed before approval of shop drawings or samples, where such are required, and advise the ENGINEER when he believes it is necessary to disapprove work as failing to conform to the Contract Documents.
7. **Review of Work, Inspections and Tests:**
 - a. Conduct on-site observations of the work in progress for the ENGINEER as a basis for determining that the Project is proceeding in accordance with the Contract Documents, and report to the ENGINEER whenever he believes that any work should be rejected or specially tested, or that the work should be stopped to insure that the completed Project will comply with the requirements of the Contract Documents.
 - b. Verify that tests, including equipment and systems startup, which are required by the Contract Documents are conducted and that the CONTRACTOR maintains adequate records thereof; observe, record and report to the ENGINEER appropriate details relative to the test procedures and startups.
 - c. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the outcome of these inspections and report to the ENGINEER.
8. **Interpretations of Contract Documents:** Transmit to the CONTRACTOR the ENGINEER'S interpretations of the Contract Documents.
9. **Modifications:** Consider and evaluate CONTRACTOR'S suggestions for modifications in drawings or specifications and report them with recommendations to the ENGINEER.
10. **Records:**
 - a. Maintain at the job site orderly files for correspondence, reports of job conferences, shop drawings and other submissions, reproductions of original contract documents including all addenda, change orders, field orders, and additional drawings issued subsequent to the award of the contract, the ENGINEER'S interpretations of the Contract Documents, progress reports, and other Project related documents.
 - b. Keep a diary or log book, recording hours on the job site, weather conditions in general and specific observations in more detail as in the case of observing test procedures.
 - c. Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors, and major material suppliers.
 - d. Maintain a set of drawings on which authorized changes are noted, and deliver to the ENGINEER at the completion of the Project.
11. **Reports:**
 - a. Furnish the ENGINEER periodic reports as required of progress of the Project and the CONTRACTOR'S compliance with approved progress schedule.
 - b. Consult with the ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Project.

12. *Payment Requisitions:* Review applications for payment with the CONTRACTOR for compliance with the established procedure for their submission and forward them with recommendations to the ENGINEER, noting particularly their relation to the work completed and materials and equipment delivered at the site.
13. *Guarantees, Certificates, Maintenance and Operation Manuals:* During the course of the work, assemble Guarantees, Certificates, Maintenance Operation Manuals and other required data to be furnished by the CONTRACTOR and upon acceptance of the Project, deliver this material to the ENGINEER for his review and forwarding to the OWNER.
14. *Completion:*
 - a. Prior to inspection for substantial completion, submit to the CONTRACTOR a list of observed items requiring correction.
 - b. Conduct final inspection in the company of the ENGINEER and the OWNER and prepare a final list of items to be corrected.
 - c. Verify that all items on final list have been corrected and make recommendations to the ENGINEER concerning acceptance.

C. *Limitations of Authority.*

Except upon written instructions of the ENGINEER the Resident Project Representative:

1. Shall not authorize any deviation from the Contract Documents.
2. Shall not undertake any of the responsibilities of the CONTRACTOR, the subcontractors or the CONTRACTOR'S superintendent.
3. Shall not expedite the work for the CONTRACTOR.
4. Shall not advise on or issue directions relative to any aspect of the means, methods, techniques, sequences or procedures of construction unless such is specifically called for in the Contract Documents.
5. Shall not authorize the OWNER to occupy the Project in whole or in part.
6. Shall not participate in specialized field or laboratory tests.

4015
TITLE OF ORDINANCE SPECIAL ORDINANCE - AGREEMENT FOR ADDITIONAL ENGINEERING SERVICES ON EXPANSION

OF WASTEWATER TREATMENT FACILITIES WITH STEEG & ASSOC., ENGNRS.

DEPARTMENT REQUESTING ORDINANCE BOARD OF PUBLIC WORKS

S-78-03-31

SYNOPSIS OF ORDINANCE AGREEMENT FOR ADDITONAL ENGINEERING SERVICES ON EXPANSION OF WASTEWATER

TREATMENT FACILITIES WITH STEEG & ASSOC., ENGINEERS. THIS CONTRACT IS FOR ADDITIONS

REQUESTED THROUGH CHANGE ORDERS 18 & 19 TO THE WATER POLLUTION CONTROL PLANT

EXPANSION PROJECT.

(AGREEMENT ATTACHED)

EFFECT OF PASSAGE MOTOR CONTROL CENTER AND ADDITIONAL ADJUSTMENTS NECESSARY FOR THE

WPC PLANT

EFFECT OF NON-PASSAGE POTENTIAL NON COMPLIANCE WITH EPA GRANT REQUIREMENTS

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) AMOUNT TO BE DETERMINED BY THE

CURRENT FEDERALLY AUDITED OVERHEAD FACTOR

ASSIGNED TO COMMITTEE

EP

City of Atlanta